

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DENNIS BOODROW,

Plaintiff,

1:11-cv-129
(GLS/DRH)

v.

ANDREA EVANS
and JAMES CAMPBELL,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Dennis Boodrow
Pro Se
26 Seminole Avenue
Albany, NY 12203

FOR THE DEFENDANTS:

Andrea Evans
HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Albany Office
The Capitol
Albany, NY 12224

JAMES SEAMAN
Assistant Attorney General

James Campbell
Office of Robert P. Roche
36 South Pearl Street
Albany, NY 12207

ROBERT P. ROCHE, ESQ.

Gary L. Sharpe
District Court Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Dennis Boodrow commenced this action against defendants Andrea Evans, Commissioner of New York State Division of Parole, and James Campbell, Albany County Sheriff, asserting claims pursuant to 42 U.S.C. § 1983 for false imprisonment and emotional distress. (See Compl., Dkt. No. 1.) Pending are Evans and Campbell's motion to dismiss.¹ (Dkt. No. 14.) For the reasons that follow, defendants' motion to dismiss is granted.

II. Background²

On June 10, 2003, Boodrow was sentenced to a maximum term of eight years in state prison. (See Compl. ¶ 6, Dkt. No. 1.) Based on this sentence, his expiration date was calculated to be August 24, 2010. (*Id.*) Roughly one month before this date, Boodrow was released from the Adirondack Correctional Facility and ordered to report to the Division of Parole in Albany, New York. (*Id.*) Although he made his initial report, Boodrow's failure to report to a July 26, 2010 meeting resulted in a

¹ Campbell, by letter motion dated April 26, 2011, joined Evans' motion to dismiss. (See Dkt. No. 16.)

² The facts are drawn from Boodrow's Complaint and presented in a light most favorable to him. (See Compl., Dkt. No. 1.)

declaration of delinquency. (*Id.*) On August 20, 2010—25 days after he was declared a delinquent—Boodrow was arrested and remanded to the Albany County Jail. (*Id.*) Boodrow waived his preliminary hearing, and the Division of Parole scheduled a revocation hearing for September 13, 2010. (*Id.*) Though the final revocation hearing was never held, he was released on September 14, 2010. (*Id.*) In sum, Boodrow claims that despite his pleas to jail officials, and calls on his behalf to the Division of Parole, he was detained for 16 days beyond his maximum expiration date. (*Id.*)

III. Standard of Review

The standard of review under Fed. R. Civ. P. 12 is well established and will not be repeated here.³ For a full discussion of the standard, the court refers the parties to its decision in *Ellis v. Cohen & Slamowitz, LLP*, 701 F. Supp. 2d 215, 218 (N.D.N.Y. 2010).

IV. Discussion

Defendants argue that Boodrow's calculation of his expiration was incorrect, and thus, his claim must fail. (See Dkt. No. 14, Attach. 1 at 6.) The court agrees.

³ Because Boodrow is proceeding *pro se*, the court will construe his Complaint liberally. See *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006).

Under the New York Penal Law, Boodrow's expiration date was tolled during the period he was a delinquent. N.Y. Penal Law § 70.40(3)(a) (McKinney 2011); see also N.Y. Comp. Codes R. & Regs. tit. 9, § 8004.3(b) ("The date of delinquency is the earliest date that a violation of parole is alleged to have occurred. The declaration of delinquency, when issued, interrupts the sentence as of the date of the delinquency.").

Here, Boodrow was declared a delinquent on July 26, 2010, and was not rearrested until August 20, 2010. (See Compl. ¶ 6, Dkt. No. 1.) This period of delinquency extended his original expiration date to September 23, 2010. As such, his release on September 14, 2010 was timely, and his claim of wrongful imprisonment fails.⁴

V. Conclusion

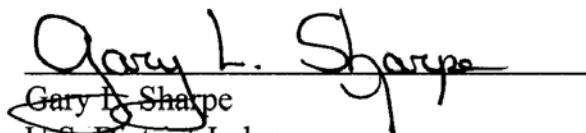
WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that defendants' motion to dismiss (Dkt. No. 14) is
GRANTED and all claims against Evans and Campbell are **DISMISSED**;
and it is further

⁴ The court notes that Boodrow has not offered any facts to support his claim for emotional distress. (See Compl. ¶ 7, Dkt. No. 1.) Although detailed factual allegations are not required, Boodrow must "provide the grounds of his entitlement to relief[,] . . . labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, his claim for emotional distress is dismissed.

ORDERED that the Clerk close this case; and it is further
ORDERED that the Clerk provide a copy of this Memorandum-
Decision and Order to the parties by mail and certified mail.

IT IS SO ORDERED.

October 7, 2011
Albany, New York



Gary L. Sharpe
U.S. District Judge